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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Extrajudicial, summary or arbitrary executions

Addendum

Report by Mr. B.W. Ndiaye, Special Rapporteur, on his mission to Rwanda from 8 to 17 April 1993

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Introduction

1. In recent years, Rwanda has attracted the attention of the human rights protection mechanisms established by the Commission on Human Rights. Reference was thus made to the human rights situation in that country in several reports submitted to the Commission at its forty-ninth session; of particular relevance is the information contained in the report of the Special Rapporteur on the question of torture (E/CN.4/1993/26, paras. 386 to 390), and in that of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25, paras. 441 to 446).

2. Mr. Wako, the previous Special Rapporteur, included allegations of violations of the right to life in Rwanda in his report to the Commission at its forty-eighth session (E/CN.4/1992/30, paras. 461 to 467). During 1992, the current Special Rapporteur received reports and allegations relating to extrajudicial, summary or arbitrary executions of unarmed civilians by the Rwandese security forces in connection with the armed conflict between government security forces and the Rwandese Patriotic Front (FPR) since October 1990. He also received information concerning killings of members of the Tutsi minority, in particular the Bagogwe clan, allegedly perpetrated with direct or indirect involvement of the security forces; those alleged violations of the right to life concerned at least 172 persons in 1992. On 25 September 1992, the Special Rapporteur sent an urgent appeal to the Government of Rwanda after receiving reports about death threats and acts of harassment against a member of a human rights group; the latter had conducted inquiries whose findings pointed to the involvement of local government officials in mass killings of members of the Bagogwe clan. These allegations are contained in the report submitted to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 502 to 504).

3. At the beginning of 1993, Rwandese human rights organizations invited the Special Rapporteur to take part in an international commission of inquiry into violations of human rights in Rwanda. The Special Rapporteur had to decline the invitation in the belief that, since there was a State system in Rwanda, it was for the authorities of that country to conduct inquiries and report on measures taken, the Rapporteur's role being confined, in the circumstances, to observing the manner in which the competent authorities were meeting their commitments in regard to the protection of human rights. He asked, however, to be kept informed of the findings, conclusions and recommendations of the international commission of inquiry.

4. On 8 February 1993, the FPR breached the cease-fire agreement concluded on 12 July 1992 during the Arusha (Tanzania) peace negotiations. It was in that context that serious allegations were brought to the attention of the Special Rapporteur. On 15 February 1993, an urgent appeal was sent to the Rwandese Government following reports of a resumption of the killings and of reprisals and acts of intimidation against persons who had collaborated with or testified before the International Commission of Inquiry on violations of human rights in Rwanda since 1 October 1990 (referred to hereinafter as "the International Commission of Inquiry"). This Commission, which visited Rwanda from 7 to 21 January 1993, was composed of 10 experts mandated by the International Federation of Human Rights (Paris), Africa Watch (New York), the Union interafricaine des droits de l'homme et des peuples (Ouagadougou),

and the International Centre for the Rights of the Person and Democratic Development (Montreal). It was these disturbing allegations that prompted the Special Rapporteur, on 1 March 1993, to request an invitation from the President of the Rwandese Republic to visit Rwanda so that he could have personal talks with the Rwandese authorities and with individuals, associations and non-governmental organizations involved in the protection of human rights, and assess the situation at first hand.

5. On 8 March 1993, the President of the Rwandese Republic kindly complied with that request by inviting the Special Rapporteur to visit Rwanda. The report of the International Commission of Inquiry was made public on the same date.

I. METHOD OF WORK

6. Because of the shortage of time and of material and human resources available to the Special Rapporteur (he stayed only about 10 days, from 8 to 17 April 1993), there was no question of undertaking an in-depth fact-finding or verification mission, which would have entailed, inter alia, substantial logistic and scientific resources; for example, experts in forensic medicine would have been needed to verify the existence of mass graves.

7. The work of the Special Rapporteur was greatly facilitated by the considerable amount of information which was brought to his attention by various human rights organizations, both Rwandese and international, and which was on the whole sufficiently convincing and precise to be taken into account. Special mention should be made here of the report of the International Commission of Inquiry, which the Special Rapporteur was able to use as his main working document because of its methodical and specific nature and the diversity and consistency of the testimony it contains. The report of the International Commission of Inquiry gives an idea of the scale of Rwanda's problems as regards human rights in general and extrajudicial, summary or arbitrary executions in particular. It goes in detail into the mechanisms behind the massacres and describes the methods used by the perpetrators of violations; it also clearly identifies those responsible for violating the right to life.

8. On 7 April 1993, just after the Special Rapporteur had arrived in Rwanda, the President of the Republic and the Prime Minister (the latter having his roots in the Republican Democratic Movement (MDR, the main opposition party)) issued a joint statement on the report of the International Commission of Inquiry (hereinafter referred to as the "Joint Statement"; see annex II). In this document, the authors recognize the substance of the allegations contained in the report. In particular, they acknowledge and regret that there have been massacres of civilian populations and also that certain Rwandese authorities bear some share of responsibility. The justifications given are as follows: shortcomings in the judicial system and failure of certain authorities adequately to ensure the security of persons and their property, "uncontrolled behaviour" by certain undisciplined members of the armed forces, and the existence of criminal organizations. The facts denounced by the report are therefore recognized, even though the Joint Statement is critical of the methods of the International Commission of Inquiry, especially the lack of balance between denunciations levelled at

the authorities and those aimed at the FPR, and the fact that the persons accused of human rights violations were not heard by the investigators. The Commission of Inquiry is also reproached for not having drawn the attention of the international community sufficiently to the critical situation of persons displaced by war, and for giving the impression that human rights violations in Rwanda are directed against a particular ethnic group. The Joint Statement concludes with a series of recommendations along the same lines as those contained in the report of the International Commission of Inquiry.

9. After cross-checking, the Special Rapporteur concluded that the substance of the allegations contained in the Commission's report could, by and large, be regarded as established. He none the less proceeded to collect information on events after the report.

10. During his mission, the Special Rapporteur was received by the President of the Republic, the Prime Minister and several members of the Government, and also met a large number of representatives of the Rwandese civilian and military authorities. He also had talks with the diplomatic representatives of several countries, with the commander of the group of neutral military observers of the Organization of African Unity (OAU) (which is supervising the observance of the cease-fire agreement between the two warring parties), and with the leaders of political parties represented in the transition Government. Many discussions were held with the representatives of all the Rwandese human rights organizations, and with witnesses and victims of human rights violations. A large number of other persons from various walks of life also made an invaluable contribution to the Special Rapporteur's mission. In addition, the Special Rapporteur met the Chairman of the FPR's military operations, who is also the Vice-Chairman of the organization, and several other of its senior officials.

11. He visited camps for displaced persons, both around Kigali and in the area controlled by the FPR forces. He made a brief visit to the prefecture of Gisenyi, a region which numerous allegations reported to the Special Rapporteur had indicated as being the scene of massacres of civilians. He also visited a prison and two military camps in Kigali.

II. HISTORICAL BACKGROUND AND ISSUES INVOLVED

12. Rwanda, a small central African State with a surface area of 26,338 km^2 and a population of over 7 million, is the most densely populated country in the world after Bangladesh. Its economy, primarily agricultural, relies to a great extent on international development aid. The country's precarious economic situation has deteriorated even further as a result of the fall in the price of coffee and the armed conflict with the FPR, which has been going on since October 1990. A structural adjustment programme undertaken at the prompting of the World Bank and the International Monetary Fund (IMF) was also launched at that time.

13. The population of Rwanda is divided into three ethnic groups - the Hutu (85 per cent), the Tutsi (14 per cent) and the Twa (1 per cent); these three ethnic groups speak the same language and share the same culture. Children of mixed marriages belong to the father's ethnic group. Traditionally, the Hutu

are farmers, whereas the Tutsi are stockbreeders. In the past, transition from one group to another was possible: a Hutu acquiring a large number of head of cattle could be assimilated into the Tutsi group, and a Tutsi who lost his cattle could be regarded as a Hutu. Later, the Belgian colonial authorities, basing their action on divisions among the Rwandese, required the ethnic group to be specified on identity cards. From then on, membership of an ethnic group was strictly defined for administrative purposes and social categories became increasingly rigid.

14. The Tutsi dominated the country's political and economic life until 1959, when the Hutu "social revolution" put an end to the monarchy. The Twa, for their part, have always been and still are regarded by the vast majority of the Rwandese as being outside the economic and social mainstream of Rwanda.

15. The country was a German colony from 1894 to 1916 and was then placed by the League of Nations, and subsequently the United Nations, under Belgian trusteeship, from 1918 to 1962.

16. After the 1959 "social revolution" and the ensuing ethnic violence, a large number of Tutsi left Rwanda and sought refuge in neighbouring countries. They repeatedly attempted to stage an armed come-back. There were about 10 such attempts until 1967, and each of them gave rise to renewed ethnic violence and retaliation, with the slaughter and flight of civilians that that entailed. For example, between 10,000 and 14,000 Tutsi are estimated to have been killed during the 1963 massacres.

17. In 1973, when ethnic unrest and violence were at their height, Major General Juvénal Habyarimana seized power in a military coup d'état. He founded the second Republic, a regime dominated by the single party set up by the President, the National Revolutionary Movement for Democracy and Development (MRND). About 50 political leaders from the previous regime are reported to have been done away with following the coup d'état. Previous practices of ethnic discrimination were institutionalized during this period through a policy known as "establishing ethnic and regional balance", whereby a very substantial part of the country's political and social life became subject to quotas established according to "ethnic proportions" and determining the posts and resources allocated to the various ethnic groups (10 per cent for the Tutsi). This policy, which precludes any prime consideration of competence, is to this day a determining factor in the social, political and administrative life of the Rwandese (access to jobs, posts in the administration, education, etc.). In fact, this percentage system reflects a conception of democracy based on government by the ethnic majority rather than by the political majority.

18. As from 1973, regional rivalries were added to this ethnic antagonism, with the north, the home region of the President of the Republic, enjoying privileges in relation to the rest of the country.

19. It was against this background of relatively non-violent ethnic and regional rivalries, and a few months after the announcement by the President of the Republic that the country would soon be opened up to multi-party rule and democratization, that a devastating attack was launched in October 1990 by the FPR, an armed force consisting mainly of Tutsi refugees outside Rwanda,

many of them former members of the Ugandan armed forces. The result of this attack and of a policy of deliberately-targeted government propaganda was that all Tutsi inside the country were collectively labelled accomplices of the FPR. It was this linkage, the ensuing climate and the directives which followed that triggered the massacres of civilians described in this report.

20. Many of the people to whom the Special Rapporteur spoke pointed out that the return of the 400,000 to 500,000 refugees from abroad would cause a number of problems. Firstly, as has been mentioned, Rwanda is the most densely populated country in Africa and there has long since been no land to spare. In addition to this, certain Hutu businessmen are afraid that the Tutsi who have made their fortune in the countries receiving them are coming back to resume control of the Rwandese economy, thereby reasserting their domination. There is also a widespread belief that the FPR and the Tutsi in general want to re-establish the pre-1959 "feudal monarchistic" system. Although the majority of the population consider that it is possible for the two main ethnic groups to live together peacefully, there is a certain elite which, in order to cling to power, is continuing to fuel ethnic hatred, for instance by spreading rumours prejudicial to the Tutsi. The FPR is often identified with the Tutsi ethnic group. It should also be noted that some members of the opposition parties, though Hutu themselves, have been accused of being traitors to their country by Hutu extremists (such as the members of the Coalition for the Defence of the Republic (CDR) party, a radical offshoot of the MRND) because of their opposition to the Government in power and their attempts to enter into a dialogue with the FPR.

21. Since 16 April 1992, four opposition parties (Republican Democratic Movement, Liberal Party, Christian Democrat Party and Social Democrat Party) have held half of the ministerial posts and the post of Head of the Government, and have been endeavouring to participate in the running of the country's affairs. Under the Constitution of 10 June 1991, however, real power remains vested in the President of the Republic, who controls the army, the police force and most of the local government. The result of this is that action by the Prime Minister and some of his ministers is often obstructed by MRND representatives in the Government.

22. A climate of mistrust and terror currently prevails in Rwanda. Although rumour is largely responsible for this situation, violence is none the less a feature of everyday life. There is an alarming increase in crime, fuelled by the profusion of weapons in circulation (in Kigali a grenade can be bought for less than US$2) and the destitute condition of a whole sector of the population, exacerbated by displacements of the population as a result of the war. But the prevalence of crime is also sometimes used to cover up acts of political violence. There are several cases of murder or attempted murder of political opponents, journalists or troublesome witnesses that have been passed off as ordinary crimes. The situation has become particularly explosive with the distribution of weapons to civilians by the authorities, officially to combat the forces of the FPR, an example being in the municipality of Mutura, where 193 guns were distributed in February 1993. This is compounded by the danger of the mines laid by the warring parties, which all too often kill or maim innocent civilians, especially children.

23. This report would not be complete without a reference to one of the most tragic consequences of the present situation in Rwanda - the displacement of populations within the country. Before the violation of the cease-fire agreement by the FPR on 8 February 1993, 350,000 persons had already fled in terror from the combat zones and the areas of intercommunal violence, leaving behind them all their possessions and their lands, situated mainly in the northern, most fertile region of the country. Since then, the number of displaced persons has risen to 900,000 and possibly 1 million. This means that almost one in seven Rwandese has been displaced by war. An unknown number of displaced persons are also living in the area held by the FPR on the border with Uganda in the north of the country. Some of them have reportedly been deported to that country. To these must be added an indeterminate number of persons who, as a result of local acts of violence whose presumed perpetrators are still at large, live in a permanent state of terror and dare not move back into their homes, cultivating their fields in the daytime and spending the night in the open or with members of their families.

24. The displaced persons, among them a high proportion of children, live a precarious life of hardship in overcrowded makeshift camps and depend on massive external food aid (13 tonnes a month) for their survival. According to information provided by one of the humanitarian organizations working there, cases of severe malnutrition have already been identified among children under the age of five. The deplorably unhygienic conditions in which they live have also caused epidemics of dysentery. According to forecasts brought to the attention of the Special Rapporteur, the next harvest could be down by 40 per cent as a result of the exodus from the fertile lands situated in the combat areas. This catastrophic situation might therefore lead to famine. The question of the displaced persons is nothing short of a time-bomb with potentially tragic consequences if it is not resolved quickly principally by a return to peace and the arrest of the instigators of the massacres. It is regrettable that the misfortune of these war victims should be used by both warring parties as a political weapon in their struggle for power and in the Arusha peace negotiations.

III. VIOLATIONS OF THE RIGHT TO LIFE

25. Rwanda has acceded to the International Covenant on Civil and Political Rights, but has not ratified the first and second optional protocols. The provisions of the Covenant form part of domestic law and take precedence in the event of conflict with another provision of domestic law. Rwanda is also a party to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Convention on the Rights of the Child, and the Convention relating to the Status of Refugees and the Protocol thereto. In addition, Rwanda is a party to the four Geneva Conventions and to their additional protocols. On the other hand, the country is not yet a party to the Convention against Torture.

26. For its part, the FPR has stated to the International Committee of the Red Cross that it considers itself bound by the rules of international humanitarian law.

27. It has been reported that between October 1990 and January 1993, at least 2,000 civilians have been victims of extrajudicial, summary or arbitrary executions. Since 8 February 1993, the date on which the FPR violated the cease-fire agreement concluded at Arusha, at least 300 Tutsi and political opponents are said to have been killed, mainly in the prefectures of Gisenyi, Ruhengeri, Kibuye and Byumba.

A. Types of violations

1. Massacres of civilian populations

28. Massacres of civilian populations have been perpetrated either by the Rwandese security forces or by certain sectors of the population. Killings have taken place not only in the combat zones during or after clashes, but also in areas situated some distance from the hostilities. In the latter case, it has been shown time and time again that government officials were involved, either directly by encouraging, planning, directing or participating in the violence, or indirectly through incompetence, negligence or deliberate inaction. The number of victims has sometimes reached tragic proportions, as for example in Kibilira, where at least 348 persons were said to have been killed in 48 hours shortly after the outbreak of war in October 1990. Massacres have also been attributed to the FPR.

2. Death threats and "political" assassinations

29. These methods have been used to intimidate or eliminate the regime's opponents (politicians, journalists, etc.), witnesses of human rights violations, or human rights activists. Such violations of the right to life have sometimes been committed by government officials. They can also frequently be attributed to the militias of two parties, the MRND and the Coalition for the Defence of the Republic (CDR), or to clandestine armed groups allegedly close to the party in power. The techniques used include poisoning, faked robbery and death threats. It should be noted that such practices are also aimed at the Hutu and are still being used at the time of writing of the present report.

3. Death penalty

30. Hundreds of people have been sentenced to death in Rwanda. At the time of the Special Rapporteur's visit to Kigali prison, 205 prisoners, 29 of them women, were awaiting execution. It should be noted, however, that no death sentence has been ordered since 1982. In view of the gross shortcomings of the judicial system, described below, it is to be feared that these persons have not had a fair trial, notably in so far as the competence, independence and impartiality of the courts are concerned. In most cases it is also to be feared that the rights of defence have not been respected.

31. As to death sentences passed by the FPR on members of its own forces, the Special Rapporteur was unable to determine what guarantees were provided to ensure that innocent men did not end up facing a firing squad.

B. Persons responsible for violations

32. It is sometimes difficult to form a clear picture of the situation where resonsibility for violations of the right to life is concerned. Indeed, in many cases, it cannot be attributed to any single person or group, since it has frequently been noted that those committing the violations have been manipulated or directed by some higher authority.

1. Violations attributable to the Rwandese armed forces

33. After the beginning of the armed conflict in October 1990, the Rwandese Armed Forces (FAR) carried out a massive and hurried recruitment campaign, increasing their numbers from 5,000 to 40,000 men in the space of a few months. The undue haste with which recruits were selected and instructed had negative repercussions on the discipline of the combatants and on their training in the rules of war. These inadequacies, combined with the low wages received by the soldiers, facilitated the crimes committed by the FAR, such as the endemic pratice of raping Tutsi women (cases of 12-year-old rape victims have been reported, their young age being regarded as a protection against AIDS), looting, armed attacks, revenge killings and murders of civilians, both within and outside the combat zones.

34. Cases of summary executions by the FAR have also been reported; they have notably concerned non-combatant soldiers of the FPR or civilians suspected of being the latter's accomplices, who have been arrested by soldiers and killed in military camps. At the time of the Special Rapporteur's visit to the camps in Kigali and Kanombe, the camp commanders categorically denied the existence of such practices. On the other hand, they both gave similar accounts of incidents said to have taken place in the two camps: men arrested on suspicion of being enemy agents had been killed on entering the camp by war amputees wielding crutches after the soldiers escorting the suspects had failed to intervene.

35. The FAR have also played an active and well-planned role at the highest level in certain cases of killings of Tutsi by the population, notably with respect to massacres targeting the Bagogwe: for instance, soldiers of Bigogwe camp (Mutura Commune) are said to have organized fake attacks by rebels during the night of 4 February 1991, so that they could then unleash indiscriminate and bloody reprisals against those alleged to be responsible. The FAR are also accused of incitement to murder and of giving logistic support to the killers. There have also been occasions, for example in the case of the massacres at Bugesera in March 1992, when soldiers disarmed the Tutsi so that they would be unable to defend themselves against their attackers, or prevented populations under threat of violence from fleeing the area by setting up roadblocks.

36. The FAR's involvement in the killings has been confirmed by numerous reliable witnesses, and even by the findings of a commission set up by the Government on 15 September 1992 to investigate allegations of massacres in the prefecture of Kibungo. It should be noted that these findings have not resulted in the imposition of any penalties on the accused military personnel.

2. Violations attributable to local government officials

37. The role of such officials (prefects, sub-prefects, mayors, councillors, sector leaders or cell leaders) in the massacres of civilian populations consists chiefly in encouraging, planning and directing the operation, and in some cases actually participating in it. In fact, there are numerous well-documented reports to the effect that certain mayors have spread unfounded rumours exacerbating ethnic hatred and have encouraged the population to massacre Tutsi people. In some cases, such officials have facilitated the task of those perpetrating the massacres by supplying them with equipment, such as vehicles or fuel. On many occasions, the authorities have not intervened to prevent such action and have not taken any steps to stop killings of civilians by a mob (see sect. 6, para. 42 below).

38. Although the attitude and behaviour of certain mayors and other local officials has been criminal, it should be noted that others have shown courage and refused to take any part in the massacres. Many of them have paid for it later by being censured, transferred or dismissed, and some have even received death threats.

3. Violations attributable to other government officials

39. It has been noted that the prison authorities do not provide any medicines for prisoners, on the pretext that they must pay for them themselves. If the latter are poor or have no family to help them, they do not receive proper treatment. Deaths in prison in suspicious circumstances have also been reported.

4. Violations attributable to political party militias

40. Youth organizations of some political parties have been converted into militias, sometimes armed, and used in the struggle for power. This has resulted in brawls and armed confrontations. In addition, it has been reported on numerous occasions that two of these militias, those of the MRND and the CDR, have been guilty of incitement to ethnic violence against the Tutsi, of massacres of civilian populations and of political assassinations. In a few well-documented cases, it has been shown that members of these militias have been backed by plain-clothes members of the FAR and by representatives of the local authorities. In any event, it would seem that such militias have been able to commit their misdeeds and impose a reign of terror with complete impunity. For instance, they have succeeded in setting up roadblocks, in complete defiance of the law, without being in any way troubled by security forces in the vicinity. It has also been reported that these militias have been trained by members of the Presidential Guard and by members of the armed forces. It has been suggested that this state of affairs is the result of efforts by certain authorities to "privatize" violence by channelling it through such groups, so as to avoid being held responsible for the massacres. It has also been reported that the MRND and CDR militias have recruited children and displaced persons and made them take part in violent demonstrations in return for payment.

5. Violations attributable to clandestine organizations

41. The existence of "death squads" is the subject of much argument in Rwanda, particularly since the close entourage of the Head of State, and even the President himself, have been explicitly accused of being involved in a clandestine organization known as "Network Zero". It has been reported that the objective of such groups is to get rid of troublesome individuals in order to create a climate of terror and insecurity, thus discrediting democratic reforms, the multi-party system and the peace process initiated at Arusha. Methods used are said to include assassinations of the regime's opponents (notably by poisoning, terrorist attacks or faked robberies), and provoking bloody riots and confrontations, sometimes in collaboration with the militias of parties close to those in power, plain-clothes members of the armed forces or representatives of the authorities. Several observers accuse such groups of being responsible for the planning of massacres of one part of the population by another. Unfortunately, there is little first-hand and reliable evidence to corroborate these allegations. There are nevertheless sufficient indications to enable the Special Rapporteur to conclude that a second power exists alongside that of the official authorities.

6. Violations attributable to private individuals

42. The Rwandese population, 95 per cent of whom are farmers, are for the most part peace-loving. Nevertheless, the worst killings can be attributed to "out-of-control" mobs of Hutu peasants. Most of the massacres are the result of ethnic violence, said to be deliberately fomented by certain individuals allegedly close to those in power. A study of the phases preceding outbreaks of violence among the population shows that such outbreaks were planned and prepared, with targets being identified in speeches by representatives of the authorities, broadcasts on Rwandese radio and leaflets. It is also noteworthy that at the time of the violence, the persons perpetrating the massacres were under organized leadership. In this connection, local government officials have been found to play a leading role in most cases (see sect. 2, para. 37, above). This analysis appears to be confirmed by the fact that the disturbances very often follow the lines of local boundaries, depending on whether or not the authorities are involved. The fact that the attacks are simultaneous, and that the rumours spread are similar, would also suggest the existence of an organization not confined to a single commune. The above remarks should not obscure the fact that under cover of the ethnic disturbances some settling of scores between neighbours or murders accompanied by robbery may have taken place. The fact remains that such crimes, which were usually directed against the Tutsi, have also gone unpunished; the persons arrested after the violence have been quickly released without being made to stand trial.

7. Violations attributable to the Rwandese Patriotic Front

43. A number of alleged violations of the right to life attributable to forces of the Rwandese Patriotic Front (FPR) have been brought to the attention of the Special Rapporteur. Although several accusations of massacres of civilian populations levelled against the FPR are lacking in credibility, the fact remains that reliable sources have revealed that the FPR has in fact perpetrated executions in the areas under its control. For

instance, it has been reported that, following the resumption of hostilities by the FPR on 8 February 1993, 8 representatives of the authorities and at least 100 civilians were summarily executed; members of the MRND and the CDR were said to have been specially singled out. In view of the lack of information concerning the situation on the ground, and in the light of the inaccessibility of the area in question and the limited time available to the Special Rapporteur, it was extremely difficult for him to form a personal opinion on the matter during his mission to Rwanda. On the other hand, he was able to meet reliable individuals who convinced him that these summary executions did actually take place. It is accordingly important that a more extensive investigation should be held, covering not only the areas under FPR control, but also certain border regions situated in Ugandan territory. Such an investigation could be carried out by an international team of experts providing every guarantee of independence and impartiality, such as the team which visited Rwanda in January 1993. The contacts which the Special Rapporteur had in Rwanda with the FPR indicate that the latter would be willing to receive a fact-finding mission of this kind.

IV. FACTORS WHICH HAVE FACILITATED VIOLATIONS OF THE RIGHT TO LIFE

A. Absence of the rule of law

44. The absence of the rule of law seems to be deliberate. In fact, there is a striking contrast between, on the one hand, the close control exercised over the population and the detailed partitioning of the territory (to such an extent that a residence permit is required simply to change prefectures), and, on the other, the absence of any structure for the protection of vulnerable populations, more particularly the Tutsi minority. In fact, no effective system for preventing and punishing violations of the right to life exists. The absence of the rule of law is evident in at least two respects.

1. Tradition of impunity

45. As in the past, the fact that persons responsible for violations of the right to life can be certain of impunity is the chief reason for the current renewed phenomenon of summary executions. Evidence of this state of affairs has been noted on numerous occasions: political-party militias who set up roadblocks in the vicinity of army posts make identity checks in defiance of the law and commit acts of violence against passers-by; soldiers who strangled a civilian in broad daylight in front of Kigali Central Post Office on 9 March 1993 calmly walked away once the crime had been committed; crowds whipped up by agitators threatened honest local authority representatives attempting to intervene in ethnically-motivated massacres; murder suspects have been released following death threats against certain representatives of the authorities, etc.

46. As Federico Andreu wrote in his foreword to a study by the Economic and Social Council on impunity, "Impunity creeps into every area of the society, undermines political life, destroys social textures, annuls democratic coexistence among peoples and individuals and consecrates the law of silence as the supreme norm for survival. Finally, impunity assures a reproduction of

injustice in all its forms and the continuation of the status quo".* Thus, lessons should be learned from the past: as has been noted in the first part of the report dealing with the history of Rwanda, the country has already experienced many massacres of an ethnic character. Such acts of violence recur periodically, and the persons responsible, who in most cases are known to everyone, go unpunished. The Special Rapporteur became aware in the course of his mission that this situation was part and parcel of everyday life for many Rwandese people, and that ethnic violence had become a practice which, if not accepted, was at least firmly rooted in Rwandese folk memory.

2. Judicial system

47. Rwanda's judicial system is to a large extent based on the inheritance from the colonial order. It is the serious failings of this system that have made possible the impunity enjoyed by the persons responsible for the killings. The system's failure to function has been noted on many occasions, notably by the national commission set up to assess government officials by order of the Prime Minister on 6 July 1992, which reached the conclusion that many courts were in a state of paralysis. This state of affairs is partly attributable to the lack of resources available for the administration of justice, but chiefly to the lack of political will shown by the authorities in bringing guilty parties to justice, particularly when they are members of the civil service or the army.

48. The legal training given to judges is far from satisfactory. It may be noted, for instance, that out of 659 judges, only 34 have studied law at an advanced level, and that none of the cantonal court judges have any legal training. In addition, out of 84 government procurators, only 18 hold degrees in law. These weaknesses have a considerable influence on the quality of justice in Rwanda. They also provide a loophole for accused persons, whose lawyers (when they have any) can easily invoke faults in procedure as grounds for having their clients released. Such failings make judges more susceptible to corruption and to interference by the executive in the administration of justice. It may be noted that article 86 of the Constitution of the Rwandese Republic (Journal officiel of 10 June 1991) states that "the President of the Republic is the guarantor of the independence of the judiciary". However, the joint statement of 7 April 1993 admits that "Concerning the Rwandese judicial system, it should be emphasized that it has enormous difficulties in functioning, as a result of inadequate human and material resources and interference by the political and administrative authorities".

49. It should also be noted that the fundamental principle of the irremovability of judges, a principle which guarantees their independence, is not respected. Attention was drawn to this shortcoming by the commission set up to assess government officials, which also stated that the Higher Judicial Council did not play its proper role as "guarantor of the independence of the judiciary because it is not democratically constituted".

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* Impunity. Impunidad. Impunité, International League for the Rights and Liberation of Peoples, Geneva, 1993, p. 7.

50. In addition, the inadequacy of resources made available makes it virtually impossible for the system to function properly: this applies to all stages of the proceedings, whether it be the arrest of suspects, the preliminary investigation or the pre-trial proceedings. For instance, there have been reports of plaintiffs who have had to bring officials writing paper and carbon paper to enable them to do their work. The authorities whom we met repeatedly said that this state of affairs was accounted for by the country's poverty. In the opinion of the Special Rapporteur, the genuine economic problems from which Rwanda is suffering are only a mask to hide a lack of political will on the part of certain authorities to make the judicial system capable of fulfilling its function.

51. The lack of a Minister of Justice makes it difficult to remedy this situation. In fact, the previous Minister, who was a member of an opposition party, resigned after a few months in office, discouraged by the way his work was being hindered by lack of cooperation on the part of the police and the systematic deficiencies in the resources made available to him, both materially and politically. Since January 1993, no successor has received the endorsement of the President of the Republic.

52. The absence of any properly-constituted system of military tribunals is also to be regretted. In this connection, one of the conclusions in the joint statement is that "The Government has decided to establish a military prosecutor's department in order to speed up the examination of cases involving members of the armed forces". However, no details are given as to when this institution is to be set up.

53. If justice is to be done, there is also need for the defence to be capable of performing its task. There are only about 40 lawyers in Rwanda, and no bar association. Accordingly, almost anyone can claim to be "an attorney at law". As a result, a high proportion of accused persons are not assisted during their trial or receive only very poor assistance.

54. The few inquiries that have been conducted into violations of the right to life have only been partial. They have led not to appropriate convictions, but at most to a few penalties of an administrative nature, such as the suspension of certain mayors. In other cases, persons arrested following massacres have been held in prison only briefly, before being released without trial, on account of procedural irregularities or lack of political will.

B. Absence of any system for the protection of ethnic minorities

55. Despite the terrible lessons to be learned from the country's recent history, no effective system for the prevention of ethnically-motivated massacres has been set up. There are no real police in the over-populated rural areas; at most, there are one or two local officials, who would be incapable of facing up to a rampaging mob. Nor is there any effective warning system within reach of ethnic minorities themselves or their representatives. In fact, everything is left to the diligence of local government officials, who, as has been seen on repeated occasions, are often accomplices in the massacres or even instigate them. The political and administrative commission

which investigated the disturbances in the prefectures of Gisenyi, Ruhengeri and Kibuye even noted that the region's telephone system had suddenly "broken down" at the time of the events of January 1993, and had "curiously" become operational again without any need for repairs.

C. Injurious propaganda

56. The involvement of the media in spreading unfounded rumours and in exacerbating ethnic problems has been noted on repeated occasions. Radio Rwanda, which is the only source of information for the majority of a poorly educated population, and which is still under the direct control of the President, has played a pernicious role in instigating several massacres. This is particularly true of certain broadcasts in Kinyarwanda which differ markedly in content from news programmes broadcast in French, which is understood only by a small part of the population.

57. The Special Rapporteur had proof of this discrepancy during his mission to Rwanda. He noted that the content of news programmes broadcast on Radio Rwanda and on national television differed substantially, depending on whether the listener was receiving the French version or the version in Kinyarwanda. He also found that the two different language versions of reports of the press conference he had given in order to put an end to rumours concerning the objectives of his mission contradicted one another.

58. It should be emphasized that although all the factors contributing to human rights violations described above have been exacerbated by the state of war, the economic crisis and the political rivalries rife in Rwanda, the restoration of peace will not be sufficient to eliminate them. Indeed, there can be no real peace or stability unless all these contributing factors are eradicated systematically and for good.

V. CONCLUSIONS AND RECOMMENDATIONS

59. The Special Rapporteur's recommendations are based on the lessons he learned from his visit to Rwanda and are to a large extent derived from the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989, and endorsed by the United Nations General Assembly in resolution 44/162 of 15 December 1989 (see annex III).

60. These recommendations take as their starting-point the principle that although their country is poor and overpopulated and they are exposed to all the evils of underdevelopment, Rwandese citizens, whatever their ethnic group, political affiliation or social origin, have the same fundamental rights as all other citizens throughout the world. There is no reason why their lives should not be as precious and well protected as the lives of citizens of the Netherlands, for example.

61. The international community cannot remain indifferent to their situation and must therefore provide its assistance wherever that of the Rwandese State is inadequate or non-existent. In addition, human rights must be the prime concern of any system for monitoring or implementing the agreements to be concluded by OAU or the United Nations. Human rights must also be at the

heart of any transitional system introduced after the conclusion of the Arusha peace agreements and must be the subject of a specific and effective programme. This programme might be based on the proposals made in the joint statement by the President of the Republic and the Prime Minister, a statement which has not for the moment given rise to many practical measures.

62. The Special Rapporteur intends to follow closely the action taken on his recommendations by the Rwandese authorities. To this end, he will continue to correspond with the Government, and will transmit to it, in accordance with established procedure, the numerous specific allegations of extrajudicial, summary or arbitrary executions received before, during and after his mission. He is also considering the possibility of conducting a follow-up mission, with the agreement of the Rwandese authorities, in order to see for himself how the situation has developed.

63. Each of the 12 sections below represents one recommendation, accompanied by commentaries and conclusions.

1. Mechanism for the protection of civilian populations against massacres

64. A mechanism for the protection of civilian populations against massacres should immediately be set up, in terms of both prevention (see recommendations made below) and monitoring and intervention in cases of violence.

65. According to reports, in some cases of intercommunal violence the alarm was given late and the security forces did not act to end the confrontations until several days later. Too often, measures were taken to end the violence only after human rights associations and journalists had alerted public opinion. In some cases, the delay was deliberate, in order to allow the situation to worsen; in others, it was due to failures in the communications systems and poor coordination of services. In the latter cases, those inadequacies should be corrected by setting up a system for sending information rapidly from the place where the violence is occurring directly to the security service responsible for taking action, if possible as soon as the first signs of difficulty appear, for example, by setting up a radio link. To this end, international teams of human rights observers and a civilian police force might be established, particularly in the high-risk areas; with the agreement of the Rwandese authorities, they would be placed under international supervision. The teams would enjoy the immunities and guarantees necessary in order to perform their function and would be stationed in the country until a national system could effectively take over.

66. However, if these measures are to be meaningful, the security service responsible for taking action once the alarm is given should have the means to do so effectively. This would involve more material resources (especially vehicles and fuel), more staff and staff who are better trained, especially in human rights and techniques for maintaining order. Technical cooperation in the framework of development assistance might be used for this purpose; France is already playing a not insignificant role in the training and supervision of

the police. It should be noted that measures have been taken to make the police more effective in intervening during intercommunal violence. These efforts must be pursued and supported in order to provide the means for them to intervene effectively in situations of violence.

2. Support for Rwandese non-governmental organizations directly involved in the protection of human rights

67. Outstanding work has been done by some of the Rwandese non-governmental organizations involved in the protection of human rights (Association Rwandaise pour la Défense des Droits de l'Homme (ARDHO), Association Rwandaise pour les Droits de la Personne et des Libertés Publiques (ADL), Association des Volontaires de la Paix (AVP), Ligue Chrétienne de Défense des Droits de l'Homme au Rwanda (LICHREDHOR) and Association pour la Promotion de l'Union par la Justice Sociale (KANYARWANDA)). The members of these NGOs are all too often the only people to act, at the risk of their lives, to investigate human rights violations, bring pressure to bear on the authorities and report the culprits. These courageous efforts should therefore be stimulated and supported; the NGOs should be given material means and training opportunities in order to strengthen their activity, and especially their role in detecting the early signs of intercommunal violence. Their presence in the field and their professionalism should therefore be increased. The highest priority, however, is to ensure their protection, so that the intimidation, death threats and attacks against members are brought to an end. These remarks and recommendations also apply to certain journalists who risk their lives to report human rights violations.

3. National reconciliation campaign

68. A national reconciliation campaign should be organized in order to attempt to eliminate the negative effects in people's minds of the odious disinformation advocating ethnic and political intolerance, hatred and violence which has been disseminated in the past. This campaign should begin with a solemn, public commitment, in French and Kinyarwanda, by the Head of State, the Head of Government, the leaders of all the political parties and the religious authorities to adopt a policy of non-discrimination, national unity and respect for human rights, particularly the right to life and the right to peace. This should be followed by the setting-up of public education programmes in the media to make the population more aware of human rights principles and the need to combat ethnic discrimination. These measures should be taken at the national level, but in-depth work should be undertaken in each community. Special attention should be given to raising the awareness of persons displaced by war. International and national standards protecting human rights and the rights of minorities should be publicized in the appropriate language and form. Particular reference should be made to Commission on Human Rights resolution 1993/24 of 5 March 1993, entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities" and to General Assembly resolution 47/136 of 18 December 1992, entitled "Summary or arbitrary executions".

4. Media-related action

69. The propaganda mentioned above has sometimes been disseminated via the national radio station, which is still directly responsible to the Office of the President and not the Ministry of Information. In this connection, a reform of the role and structure of the media should be envisaged. Journalists have already begun to study this question and have adopted a code of ethics. They should be provided with training opportunities, in order to enhance their professionalism and eliminate any lingering partisan tendencies. The Minister for Information is also attempting to effect reforms, but his powers are limited and his action too often thwarted.

70. The reform of the media should take place in accordance with the spirit of the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, proclaimed on 28 November 1978 at the twentieth session of the General Conference of UNESCO. The ensuing creation of free radio stations should also conform to these principles. Lack of respect for these principles has already caused too much loss of human life.

5. Reform of the Rwandese judicial system

71. There is an urgent need for radical reform of the Rwandese judicial system. The training of judges and court officers is vital, as is the allocation of the practical means necessary for the functioning of justice. But above all, the prerequisite for the necessary changes is a new attitude on the part of the authorities. Without political will at the top, no real reform is conceivable. The following are among the measures recommended:

(a) Recruitment of new judges to be limited to persons holding a law degree, who should be given adequate means and career guarantees;

(b) Judges, especially judges who are not jurists and auxiliary judges, to be given training and refresher courses;

(c) A programme to be devised for equipping the courts and government procurator's offices and renovating their premises;

(d) A human rights training programme to be devised for the judicial police, whose effective subordination to the judiciary should be ensured;

(e) Introduction of a system for the irremovability of judges and effective implementation of the reform of the Higher Judicial Council;

(f) A free and independent bar association, open only to holders of a law degree, should be established;

(g) Code of Criminal Procedure to be revised in order to permit the installation of an examining magistrate who is independent and separate from the government procurator's office, which should be under the authority of the Minister of Justice;

(h) Code of Criminal Procedure to be revised in order to enable victims or their representatives to institute criminal proceedings, even if the government procurator rejects the case, by going directly before the examining magistrate or the trial court.

6. Death penalty

72. Imposition of the death penalty should be suspended until the judicial system affords minimum guarantees of professionalism, impartiality and independence, within the meaning of the standards embodied in the International Covenant on Civil and Political Rights. Pending suspension, the presence of a qualified lawyer should be obligatory whenever an accused person appears in court on a charge that is liable to give rise to the death penalty. Death sentences already handed down should be commuted.

7. Impartial and objective inquiry into the allegations of massacres committed by the Rwandese Patriotic Front

73. An impartial and objective inquiry into the allegations of massacres committed by the FPR is essential if this matter is to be fully clarified. Many grey areas remain, making all kinds of speculation possible. For the inquiry to be thorough, it should also cover Ugandan territory, in order to verify the charges against the FPR, in particular those involving deportations of civilians to Uganda.

8. Dismantling of all violent organizations

74. All violent organizations should be dismantled as a matter of urgency. Criminal organizations such as the "death squads", "Amasasu" or "Network Zero", must be identified and dismantled, and their members prosecuted, whatever their rank. The same measures must be taken against the political-party militias that have perpetrated human rights violations. It should be noted that article 4 of the Political Parties Act of 18 June 1991 (Journal Officiel, 1 July 1991) explicitly prohibits "the establishment of militias or other organizations using similar methods". All weapons in circulation among the population or distributed to it by certain authorities should be confiscated as a matter of urgency. In the current situation of extreme poverty, criminality and tension, one spark is all that is needed to cause the situation to degenerate.

9. Combating impunity and compensating victims

75. In general, thorough judicial inquiries (and administrative inquiries, if necessary), embodying all guarantees of objectivity and impartiality, should be conducted by qualified professionals provided with adequate means, in each case of violation of the right to life. Complainants, witnesses, the persons heading the inquiries and their families will have to be protected against violence or any other form of intimidation. All officials who are legitimate

suspects and capable of impeding the inquiry because of their position or function should be suspended. The conclusions of these investigations should be made public, and all those responsible prosecuted. The families of the victims of violations should be given material assistance, and equitable compensation if necessary, within a reasonable period of time. To this end, an assistance programme and fund should be established. Thorough inquiries, with the assistance of teams of specialists in medicine, archaeology and legal anthropology, should be opened into all allegations of mass graves, whether attributed to the Rwandese Armed Forces, the FPR or civilian populations.

76. In describing the need to end the vicious circle of impunity by rendering justice to the victims and their families, some of the people with whom the Special Rapporteur spoke mentioned the need for "drastic surgery" in order to bring about genuine national reconciliation and eliminate the spectre of a recurrence of the massacres. The country's history does not seem to show that the massacres of the past have gone unpunished and that the population has, as it were, accepted that sad situation, without drawing the necessary conclusions. History now seems to be repeating itself, and the errors of the past should be avoided.

10. Ending arbitrary arrests and detentions

77. Arbitrary arrests and detentions and unacknowledged detentions must be stopped and those responsible for such violations punished. These are the violations that foster and pave the way for summary executions. Despite the assurances he was given by the competent authorities during his mission to Rwanda, the Special Rapporteur has in fact received allegations indicating that civilians are still being held in military camps.

11. The genocide question

78. The question whether the massacres described above may be termed genocide has often been raised. It is not for the Special Rapporteur to pass judgement at this stage, but an initial reply may be put forward. Rwanda acceded to the Convention on the Prevention and Punishment of the Crime of Genocide on 15 April 1975. Article II of the Convention reads:

> "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group."

79. The cases of intercommunal violence brought to the Special Rapporteur's attention indicate very clearly that the victims of the attacks, Tutsis in the overwhelming majority of cases, have been targeted solely because of their membership of a certain ethnic group, and for no other objective reason. Article II, paragraphs (a) and (b), might therefore be considered to apply to these cases.

80. The violations of the right to life, as described in this report, could fall within the purview of article III of the Convention, which reads:

"The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide."

81. Similarly, article IV states: "Persons committing genocide or any of the other acts ... shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals".

12. Additional measures for protecting the right to life and restoring a lasting peace

(a) Preparations for demobilizing military personnel

82. Once peace has been restored, a large number of military personnel will have to be demobilized, within both the Rwandese Armed Forces and the FPR. Preparations for their reintegration into the socio-economic life of the country should not be left until that time; many of these men were unemployed youngsters who enlisted because the army gave them the possibility of eating. According to reports, some of the recruits were also delinquents. In view of the fact that all these persons have learned how to handle weapons and that it has also become very easy to obtain weapons, there is a danger that some will turn to crime if their return to civilian life goes badly. There has already been a sharp increase in armed attacks, especially with grenades.

(b) Preparations for the return of persons displaced by the war; mine clearance operations

83. Preparations for peace must include measures for the rapid return home of persons displaced by the war. Sufficient guarantees for their security must be given by the two parties to the conflict, and the combat zones must be cleared of mines. Rwanda should accordingly be provided with technical assistance for mine clearance; it is vital to reduce the dangers to the

displaced persons as far as possible when they return to their land; in addition, experience has shown that the victims of these instruments of death are all too often children. Similarly, the displaced persons should be the beneficiaries of a special assistance programme to enable them to resume their activities rapidly. The Special Representative of the Secretary-General of the United Nations on the question of internally-displaced persons might perhaps be invited by the Rwandese authorities to visit the country. Assistance programmes should also be planned for refugees abroad, who might be returning as a result of the Arusha negotiations.

(c) New identity card

84. The Minister of the Interior told the Special Rapporteur that the Rwandese identity card, which, as we have already seen (para. 13), specifies the holder's ethnic group should as from June 1993 be exchanged for a new version containing no ethnic reference; he further explained that this had not been done earlier because of lack of finance. This indispensable reform should be carried out as soon as possible.

(d) Public statements by the Head of State

85. The joint statement of 7 April 1993 (see annex II) is a positive step that should be welcomed and should be repeated whenever the human rights situation so requires. The President of the Republic, whom article 39 of the Constitution of 30 May 1991 makes the guarantor of national unity, should play a leading and unequivocal role in the protection of human rights and in national reconciliation. He should, in particular, make public statements to convince the Rwandese that human rights violations will no longer be tolerated, urge the population to report abuses to the appropriate authorities and ensure that the alleged culprits are in fact brought to justice.

(e) Establishment of a national human rights commission

86. A national human rights commission should be set up. It should, in particular:

(i) Be established by means of a law and have competence to deal with any allegation of a human rights violation;

(ii) Have an image of credibility and impartiality;

(iii) Ensure the immunity of its members and the protection of complainants and witnesses;

(iv) Be given adequate powers of investigation irespective of the alleged culprit and the power to make surprise visits to places of detention, including military camps;

(v) Be given adequate and well-trained staff;

(vi) Enforce national and international standards;

(vii) Be capable of instituting legal proceedings;

(viii) Have the power to make recommendations to all authorities;

(ix) Have offices throughout the country;

(x) Ensure the promotion and dissemination of human rights standards among the population, in particular through radio programmes in Kinyarwanda.

This commission might be partially financed by international aid. Special technical assistance might also be provided by the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights in Geneva.

Annex 1

MAP OF RWANDA SHOWING ADMINISTRATIVE DIVISIONS

Annex II

RWANDESE REPUBLIC

OFFICE OF THE PRESIDENT OF THE REPUBLIC

B.P. 15, KIGALI

STATEMENT BY THE GOVERNMENT OF RWANDA CONCERNING THE FINAL REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY ON HUMAN RIGHTS VIOLATIONS IN RWANDA SINCE 1 OCTOBER 1990

Kagali, 7 April 1993

I. INTRODUCTION

From 7 to 21 January 1993, an International Commission of Inquiry into human rights violations committed in Rwanda since 1 October 1990 visited our country. The Commission was an independent team of international experts working on a private basis with the aim of corroborating the facts and establishing responsibilities in the matter of human rights violations in Rwanda.

The inquiry was organized at the request of the Rwandese human rights organizations represented in the Comité de Liaison des Associations de Défense des Droits de l'Homme (CLADHO). The Rwandese Government agreed to facilitate the Commission's work. It should be noted that, well before this, the Government had expressed the desire for an international commission to visit Rwanda to investigate human rights violations.

Since the war was started by the Rwandese Patriotic Front (FPR) in October 1990, there have been serious violations of human rights in Rwanda. In the combat zones, civilians have been the victims of numerous forms of ill-treatment and have been forced to abandon their property and take refuge in makeshift camps where they are living in wretched conditions. This war situation has re-awakened the old demons of antagonism between the Hutu and Tutsi ethnic groups. There have been massacres and various kinds of attacks on persons and property in several regions of the country.

After completing the inquiry, the Commission made its report public. The Rwandese Government has studied the report; it acknowledges and regrets the human rights violations committed in our country. It should, however, be pointed out that there are certain lacunae in the report.

The report gives the impression that the human rights violations in Rwanda were committed outside the context of the war. It glosses over the human rights violations committed by the FPR by qualifying its statements and saying that the crimes committed by the FPR were allegedly the work of "irregular gangs", as the FPR is supposedly composed of "disciplined and well-trained" units. The Commission has also failed to check the truth of accusations made against certain persons in the course of the inquiry.

Lastly, the Commission's report gives the impression that the human rights violations in Rwanda are directed against a particular ethnic group.

II. OBSERVATIONS BY THE RWANDESE GOVERNMENT

The report of the International Commission of Inquiry deals essentially with the following points:

Massacres, extrajudicial executions, and various kinds of attacks against persons and property;

Human rights violations by the Rwandese Armed Forces and the Rwandese Patriotic Front;

Displaced persons;

The death squads and the climate of terror;

The breakdown in the judicial system;

The prison system;

Job losses.

1. With regard to the massacres and attacks against persons and property, the Government acknowledges and regrets that such human rights violations took place in Kibilira, north-western Rwanda, against the Bagogwe, in Bugesera and all other places in the country where ethnic and/or political unrest has occurred.

These appalling events can be explained not only by the psychosis of war, but also by intolerance among the members of certain political parties.

It should acordingly be stressed that the Rwandese Government has never had the intention of exterminating any ethnic group whatsoever.

However, the responsibility of the Rwandese Government lies in the failure of certain authorities properly to ensure the security of individuals and their property. The Government has acknowledged this responsibility and has pledged to take appropriate measures against all authorities who have failed in their duty to ensure public security.

It should be noted, however, that the data contained in the report of the International Commission of Inquiry are not sufficient to establish the criminal responsibility of the authorities mentioned as being responsible for these human rights violations. It is incumbent on the Rwandese justice to pursue these inquiries.

2. Concerning the human rights violations by the Rwandese Armed Forces, it must be acknowledged that there have been some unfortunate excesses on the part of certain undisciplined soldiers, which have resulted in ill-treatment of the civilian population. Soldiers found guilty of looting, rape and murder have been arrested and investigations are under way.

As to the human rights violations committed by the FPR, it was impossible for the International Commission of Inquiry to clarify the question completely. It spent only two hours in the zone under FPR control and interrogated few witnesses. Furthermore, testimony was received in the presence of FPR officers.

3. As regards displaced persons, the International Commission of Inquiry did not draw the attention of the international community sufficiently to the tragic situation of the persons displaced by war, who are currently estimated to number 1 million. This considerable number is the result of the violation of the cease-fire by the FPR on 8 February 1993. The hostilities resulting from this violation have been characterized by all types of ill-treatment of the civilian population.

4. With regard to the "death squads", it is true that many people continue to be killed in our country in unexplained circumstances, which would seem to imply that there are one or more criminal organizations in existence that were responsible for their deaths. However, the report of the International Commission of Inquiry makes an inadmissible mistake in giving the impression that the Government is responsible for the criminal acts perpetrated by "death squads". This question calls for clarification by the International Commission of Inquiry, which states, on the basis of testimony by a single individual, that the President of the Republic chaired a "death squad" meeting during which it was decided to massacre the Bagogwe.

5. Concerning the Rwandese judicial system, it should be emphasized that it has enormous difficulties in functioning, as a result of inadequate human and material resources and interference by the political and administrative authorities. Assistance by the international community is desirable in this area, for it is difficult to improve the human rights situation in a country whose judicial system is not functioning properly.

6. It must be acknowledged that the cramped and dilapidated nature of the prisons make conditions of detention difficult. To the extent of its very limited means, however, the Rwandese Government is sparing no effort to improve conditions of detention.

In this connection, reference should be made to the observations made in October 1990 by Mr. Philippe de Bruckyer and Mr. Alain Feder, representatives of the International Federation of Human Rights, during their mission to Rwanda. They noted, in particular, that "the conditions of detention found in Rwandese prisons are those of a developing country, but the Rwandese Government is making remarkable efforts to improve them".

7. Regarding job losses, it is encouraging to note that the report of the International Commission of Inquiry mentions the instructions given by the Prime Minister and the Minister of Labour and Social Affairs concerning the rehabilitation and restoration of the rights of all persons who have suffered injustice, especially civil servants who lost their jobs. It should be noted in this connection that in the public sector nearly all such civil servants have been re-employed.

It should also be noted that with the liberalization of employment currently taking place, the State no longer intervenes directly in the private sector. Employees in the private sector whose rights have been infringed will be able to take legal action.

8. In its conclusions, the report of the International Commission of Inquiry states that Rwandese journalists continue to be subjected to threats and harassment. It is true that at one time there was tension between journalists, especially of the private press, and the authorities, due above all to the introduction of the multi-party system and the lack of a well-defined work context for journalists. However, since the adoption of the Press Act and the establishment of the Ministry of Information, there are grounds for stating that the situation has returned to normal, since the journalists themselves have set up self-monitoring mechanisms, especially in the area of professional ethics.

III. CONCLUSIONS

The President of the Republic and the Rwandese Government deplore and condemn the human rights violations that have been committed in our country. Wishing to promote respect for human rights and a State subject to the rule of law, they pledge to take the following measures:

1. The President of the Republic and the Government renew their commitment to guarantee the security of all Rwandese, whatever their ethnic and political affiliation. All necessary disciplinary and judicial measures will be taken against any public employees who have perpetrated human rights violations.

2. The President of the Republic and the Government reaffirm their commitment to ensure respect for the independence of the judiciary. The Government also pledges to pursue its efforts to improve conditions of detention and ensure that detainees are no longer held in places not intended for that purpose, such as military camps.

3. The Government pledges to conduct a campaign to increase the population's awareness of the importance of national reconciliation and respect for human rights.

4. The Government pledges to prosecute and punish individuals engaging in militia activities and to prosecute political organizations that support them.

5. The Government pledges to re-employ in the civil service personnel who have been unjustifiably dismissed.

6. The Government requests the competent judicial bodies to continue the investigations begun by the International Commission of Inquiry in order to establish the truth concerning the mass graves whose existence was revealed by the Commission.

7. The Government has decided to establish a military prosecutor's department in order to speed up the examination of cases involving members of the armed forces.

8. The Government will rapidly proceed to ratify the Convention against Torture and other relevant international human rights instruments, and to withdraw its reservations concerning certain conventions.

9. The President of the Republic and the Government pledge to respect all the agreements resulting from the Arusha peace negotiations.

10. The Government pledges to pursue the democratization process under way and to establish a National Human Rights Commission.

The Rwandese Government calls on the Rwandese Patriotic Front:

1. To cease its executions, physical attacks and abductions of civilians, and the destruction and looting of their property;

2. To cease all attacks on civilian targets, such as camps for displaced persons, hospitals and schools;

3. To end the practices of deportation and use of civilians for military purposes;

4. To punish those responsible for ill-treatment by its troops;

5. To respect the cease-fire and the agreements concluded with the Rwandese Government.

The Rwandese Government calls on the international community:

1. To continue to encourage the parties concerned to pursue the Arusha peace negotiation process and to respect the commitments contained in the agreements already signed;

2. To strengthen its assistance in the promotion of respect for human rights and in the pursuit of the democratization process in Rwanda;

3. To mandate an international commission of inquiry, preferably established under United Nations auspices, to shed light on all the human rights violations committed by the FPR. This commission should spend sufficient time in the zone under FPR control and be authorized to meet the witnesses it chooses to interview without FPR members being present. It should also conduct investigations in Uganda in order to shed light on the cases of deported persons and prisoners of war, and in the concentration and forced-labour camps reportedly established by the FPR;

4. To help Rwanda in the training of judges and in mobilizing the material resources necessary in order to strengthen the Rwandese judicial system;

5. To help our country to improve conditions of detention.

Lastly, the Rwandese Government calls on the International Commission of Inquiry to provide clarification on the question of the death squads to which it referred in its report and, if necessary, to conduct a thorough inquiry in order to ascertain whether or not death squads exist in our country.

HABYARIMANA Juvénal
President of the Republic,
Major-General

NSENGIYAREMYE Dismas
Prime Minister

Annex III

PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

By resolution 1989/65 of 24 May 1989, the United Nations Economic and Social Council recommended that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, contained in the annex to the resolution and reproduced below, should be taken into account and respected by Governments within the framework of their national legislation and practices, and should be brought to the attention of law-enforcement and criminal-justice officials, military personnel, lawyers, members of the executive and legislative bodies of the Governments, and the public in general. The General Assembly endorsed the Principles in resolution 44/162 of 15 December 1989.

PREVENTION

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

INVESTIGATION

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the

subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own

protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

LEGAL PROCEEDINGS

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.